

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)	
to revise the standard rate application filing forms)	
and instructions previously adopted in)	Case No. U-18238
Case No. U-15895.)	
_____)	

At the October 11, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

Following the enactment of 2008 PA 286 (Act 286), amending 1939 PA 3 (Act 3), MCL 460.1
et seq., the Commission adopted standard rate application filing forms and instructions in Case
No. U-15895.

On December 21, 2016, 2016 PA 341 (Act 341), amending Act 3, was signed into law, with
an effective date of April 20, 2017. Pursuant to Section 6a(5) of Act 341, and except as otherwise
provided, the Commission's previously-allotted 12-month timeframe to decide rate cases was
reduced to 10 months.

On January 20, 2017, the Commission, in light of the above, opened this docket to consider
modifications needed for its standard rate application filing forms and instructions in place at the
time, directing the Commission Staff (Staff) to file proposals with necessary updates and allowing
any interested persons to submit comments, concerns, and alternative recommendations to the
Staff's proposals.

Following proposals from the Staff; comments from several interested persons, including Michigan Electric and Gas Association (MEGA), on behalf of Consumers Energy Company (Consumers), DTE Electric Company (DTE Electric), DTE Gas Company (DTE Gas), and MEGA's members; and two collaborative proceedings, the Commission issued an order in this docket on July 31, 2017 (July 31 order), adopting its standard rate case filing forms and instructions under the new Act 341 paradigm.

On August 29, 2017, MEGA, on behalf of itself, DTE Electric, and DTE Gas, filed a petition for rehearing and clarification. In its petition, MEGA contends that "[t]he Footnote 8 interpretation [in the Commission's July 31 order] is beyond the scope of the filing requirements analysis in this docket, creates new potential legal issues, is contrary to the law[,] and contradicts the plain intent of the Act 341 amendments." MEGA's petition, p. 3. MEGA further contends that "[footnote 8] is also vague and ambiguous because the interpretation creates an unknown and uncertain potential gap between issuance of a final order in a rate case, which is not really the final word, and a subsequent action that gives rise to the ability to enforce the decision." *Id.* In support of its contentions, MEGA argues, in part, that "[t]he law supports an interpretation that 'final decision' and 'final order' are two ways of describing the same thing," the "legislature was using these terms interchangeably[,] and there is no history that supports the interpretation in Footnote 8." *Id.*, pp. 5-6. MEGA, therefore, requests that footnote 8 be removed in its entirety from the July 31 order, with any delay issues, relative to finalizing future rate cases, to be addressed on a case-by-case basis.

On August 30, 2017, Consumers filed a petition for rehearing. In its petition, Consumers, while indicating agreement with some of the concerns raised in the petition filed by MEGA, chiefly expresses concern that "footnote 8, as drafted, is vague[, and] [d]epending on the interpretation, this footnote could have the unintended consequences of creating an indefinite gap

between the issuance of a ‘final decision’ and a ‘final order’ in a rate case.” Consumers’ petition, p. 2. Consumers further contends that “[t]his new process directly contradicts the Commission’s previous comments regarding the 10-month statutory timeframe.” *Id.*, p. 5. Consumers wonders if the Commission “was referring to . . . limited instances where, on a case-by-case basis, a short delay may occur and not creating a bifurcated rate case process that would allow for the continuation of the rate case process for an undefined period beyond the 10-month statutory timeframe.” *Id.* Consumers, therefore, requests clarification from the Commission with regard to footnote 8 within its July 31 order.

Rule 437 of the Commission’s Rules of Practice and Procedure, Mich Admin Code, R 792.10437, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission’s decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

In that regard, based on how MCL 460.6a(5) is written, the Commission disagrees that footnote 8 contradicts Act 341, is contrary to the law, or creates new legal issues, as specifically posited by MEGA in its petition. Nevertheless, the Commission finds good cause to clarify footnote 8 within its July 31 order at this time to, most importantly, address and alleviate concerns MEGA and Consumers raise about possible unintended consequences.

In its July 31 order, the Commission stated the following in a footnote:

MCL 460.6a(5) states that the Commission must “*reach a final decision . . . within the 10-month period following the filing of [a] completed petition or application*

...” (Emphasis added.) As a result, based on the Commission’s legal interpretation of this directive, the Commission finds that an order settling the rights of the parties and disposing of all issues in controversy in a rate case, aside from enforcement of that decision (i.e., the issuance of tariff sheets, determining the appropriate rate design, etc.), will, at the very least, be issued by the Commission within 10 months. See *Black’s Law Dictionary* (7th ed), p. 847, for the definition of “final decision.” The Commission further finds that the distinction between the Legislature’s use of the words “reach a final decision” versus “issue a final order,” the latter of which is, in fact, used in a different context elsewhere within MCL 460.6a, also provides additional support for the Commission’s interpretation.

July 31 order, p. 6, note 8.

Although MEGA contends that “final decision” and “final order” have the same meaning, the Commission disagrees. More specifically, “ ‘[w]hen the Legislature uses different words, the words are generally intended to connote different meanings.’ ” *Denton v Dep’t Of Treasury*, 317 Mich App 303, 312; 894 NW2d 694 (2016). Further, not only do these words, by themselves, have different dictionary meanings,¹ but the verbs for these words (i.e., “reach” versus “issue”) further illustrate that “reach a final decision” and “issue a final order” are different concepts under Section 6a of Act 341. Moreover, given the explicit reference to “issue a final order” elsewhere within the statute, if the Legislature truly intended for the Commission to completely dispose of applicable rate cases within 10 months, the Commission believes that the Legislature would have specifically extracted “reach a final decision” and inserted “issue a final order” in Section 6a(5) of Act 341.²

¹ Per *Black’s Law Dictionary*, “final decision” is defined as “[a] court’s last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney’s fees) and enforcement of the judgment,” whereas “final order” is defined as “[a]n order that is dispositive of the entire case.” *Black’s Law Dictionary* (7th ed), pp. 847, 1123.

² MEGA points to MCL 24.285, MCL 24.301, and MCL 24.304 to, in part, support its contention that “final decision” and “final order” are the same. However, even the language within these statutes acknowledges their differences by referring to them separately as “final decision *or* order.” See, MCL 24.285, MCL 24.301, and MCL 24.304 (emphasis added).

Considering the foregoing, and for illustrative purposes of what was intended by footnote 8 in the July 31 order, in Case No. U-16472, the Commission reached its final decision by October 20, 2011, when it issued an order settling the rights of the parties and disposing of all issues in controversy, including authorizing The Detroit Edison Company to implement rates that increased its annual electric revenues, a decision which was then subject to appeal per MCL 462.26. In that docket, however, the Commission's final order, disposing of the entire case, by detailing the approved rate design summary, tariffs, and rate realignment for the remaining realignment period resulting from its final decision (on Attachments A, B, and C), was not issued until shortly thereafter on October 28, 2011.

With that example in mind, and given the condensed timeframe in which very complex matters before the Commission now need to be considered, analyzed, and decided, the purpose of footnote 8 within the July 31 order was not to cause panic and “eviscerat[e] . . . the 10-month filing requirement . . .” MEGA's petition, p. 1. Rather, footnote 8 was intended to be transparent in notifying stakeholders that the Commission plans on having the preparation, review, and approval of final tariff sheets conforming to the Commission's final decision handled in an expeditious manner after the issuance of the final decision.³ Further, although it is the Commission's goal to completely dispose of 10-month rate cases within the 10-month timeframe, the final decision, at the very least, will be issued within the 10-month timeframe, and the attachments to that final decision, if needing to be issued beyond the 10-month time frame, will

³ As a historical point of reference, a separation between the issuance of the final decision and resulting rate design and tariff sheets was a practice taken at times prior to the implementation of Act 286. At that time, the Commission occasionally ordered the utility company to draft and file tariff sheets that conformed to the Commission's findings in its final decision (*see, e.g.,* the December 22, 2005 order, p. 90, in Case No. U-14347), and the Commission then shortly thereafter issued the final approved tariff sheets in the matter.

then be issued expeditiously thereafter. The Commission finds this process to be in line with Section 6a(5) of Act 341, as written, and will be most efficient and beneficial to all involved and affected by this new emerging world of constricted 10-month rate cases under Act 341.

THEREFORE, IT IS ORDERED that:

A. The petition for rehearing and clarification filed by Michigan Electric and Gas Association on August 29, 2017, is granted.

B. The petition for rehearing filed by Consumers Energy Company on August 30, 2017, is granted.

C. Footnote 8 within the July 31, 2017 order in Case No. U-18238 is clarified, as set forth above, and further illustrated by way of example through the process previously taken by the Commission in Case Nos. U-14347 and U-16472 for the preparation, review, and approval of conforming tariff sheets to implement the Commission's final decision.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of October 11, 2017.

Kavita Kale, Executive Secretary